

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

JOHN J. BARNOCKY, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2:21-cv-00316-JRS-MG
	)	
B. LAMMER,	)	
	)	
Respondent.	)	

**Order Dismissing Petition for Writ of Habeas Corpus  
and Directing Entry of Final Judgment**

Petitioner John Barnocky seeks relief from his conviction for Possession of a Firearm in Furtherance of a Crime of Violence. For the following reasons, Mr. Barnocky's petition must be dismissed.

**I. Background**

Mr. Barnocky pleaded guilty in the United States District Court for the Middle District of North Carolina to Armed Bank Robbery in violation of 18 U.S.C. § 2113(a) and (d) and Carry and Use of a Firearm During and in Relation to a Crime of Violence in violation of 18 U.S.C. § 924(c)(1)(A)(i). *United States v. Barnocky*, 1:10-cr-00020-TDS-1 (M.D. N.C. October 27, 2010) ("Crim. Dkt."), dkt. 25. He was sentenced to a total of 170 months' imprisonment. *Id.* On appeal, Mr. Barnocky challenged the enhancement of his sentence under the Sentencing Guidelines, and the Fourth Circuit Court of Appeals affirmed the sentence. *Id.* dkt. 32. Mr. Barnocky then filed a motion for relief under 28 U.S.C. § 2255, arguing that his counsel was ineffective and that he did not enter his guilty plea knowingly and voluntarily. *See id.* dkt. 58. The § 2255 motion was denied. *See id.* Mr. Barnocky later filed more § 2255 motions, but those motions were dismissed because

they were not authorized by the Court of Appeals as required by 28 U.S.C. § 2255(h). *Id.* dkts. 68, 75. Mr. Barnocky next filed a habeas petition in this Court arguing that his crime was not violent under *United States v. Davis*, 139 S. Ct. 2319 (2019) and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). *Barnocky v. United States*, 2:21-cv-00089-JRS-DLP. That petition was denied. *See id.* at dkts. 3, 4. Mr. Barnocky then filed this habeas petition.

## **II. Discussion**

Mr. Barnocky's habeas petition is subject to preliminary review to determine whether "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4 of the *Rules Governing § 2254 Cases* (applicable to § 2241 petitions pursuant to Rule 1(b)); *see* 28 U.S.C. § 2243. If so, the petition must be summarily dismissed.

Mr. Barnocky is not entitled to relief in this habeas petition because he already raised his claims in a prior petition. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") prohibits the filing of repeated habeas petitions that attack the prisoner's underlying conviction or sentence. Specifically, "[a] claim presented in a second or successive habeas corpus application . . . that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). AEDPA also "prevents a federal inmate from utilizing § 2241 to challenge the validity of a federal court conviction or sentence which has previously been presented to the federal court for determination, such as when challenged by way of federal collateral review." *Farrugia v. Warden, USP-Terre Haute*, No. 2:13-CV-104-WTL-MJD, 2015 WL 1565008, at \*5 (S.D.Ind. Apr. 7, 2015); *see also Valona v. United States*, 138 F.3d 693, 694-65 (7th Cir. 1998) (concluding that § 2244(a) bars successive petitions under § 2241 directed to the same issue concerning execution of a sentence); *Chambers v. United States*, 106 F.3d 472, 475 (2d Cir. 1997) (barring as a second § 2241 petition

a repetitive challenge to application of time credits in the administrative calculation of a federal sentence); *Edwards v. Perdue*, No. 5:14CV136, 2015 WL 2354702, at \*2 (N.D.W.Va. Apr. 30, 2015).

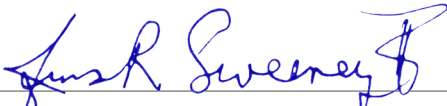
Because this petition is successive to Mr. Barnocky's previous habeas petition, it must be dismissed.

### **III. Conclusion**

For the foregoing reasons, Mr. Barnocky is not entitled to habeas relief under § 2241 and his petition for a writ of habeas corpus is dismissed. Judgment consistent with this Order shall now issue.

**IT IS SO ORDERED.**

Date: 9/22/2021



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JAMES R. SWEENEY II, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

JOHN J. BARNOCKY, JR.  
26173-057  
TERRE HAUTE - FCI  
TERRE HAUTE FEDERAL CORRECTIONAL INSTITUTION  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808